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VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 - 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation – RM -11299

Dear Ms. Dortch:

On behalf of XO Communications ("XO"), I am writing to follow up on a meeting with the Wireline Communications Bureau staff on March 21, 2007 in regard to RM-11299, the BellSouth Petition to change the distribution methodology for shared local number portability ("LNP") and number pooling ("NP") costs.

I. Incumbent Carriers Have Significant Advantages in Accessing and Using Numbers

It is important to understand at the outset of any discussion on cost recovery for LNP and NP that incumbent local exchange carriers ("ILECs") have inherent advantages in accessing and using numbers. By virtue of their status as incumbents that just a short time ago were exclusive local providers, these carriers began with a full complement of numbers without any need to access the database of a neutral numbering administrator.[1] Most of their advantage remains today. For the largest incumbents, they retain the vast majority of numbers for wireline

1 The regional Service Management System ("SMS") databases of the Number Portability Administration Center ("NPAC") are limited to (1) numbers that have been ported from ILECs and from other competitive wireline and wireless providers ("competitive providers"), and (2) "thousands block" number pools, which were obtained by competitive providers.

access – outside of the NPAC database – and rarely need new number blocks (especially as they are losing access lines). In addition, a relatively small percentage of ILEC numbers has been ported to other carriers, thus eliminating any need to dip into any database other than their own. It is only when a number has been ported from the incumbent or when another provider is otherwise involved that the incumbent would need to access the NPAC's SMS. Finally, incumbents handle a great deal more intra-switch calls – where both parties are customers of a single carrier and the carrier does not have to access another provider's SMS or the regional SMS. Despite their inherent advantage as incumbents which makes the ILECs less reliant on the NPAC's **SMS,** all ILECs and their customers benefit greatly by having a neutral database that ensures the accurate routing of calls onto all networks. All of these facts buttress the Commission's rationale that the current cost recovery regulations best achieve the statutory objective of competitive neutrality.

11. Government Mandated Number Utilization Requirements Disproportionately Affect New Providers and Lead to Additional NPAC SMS Transactions

The Commission's Numbering Resource Optimization Order[2] (and follow-on orders) established strict requirements for number utilization to ensure efficient use and access by all providers. XO, for instance, may not request an additional block of numbers until it is using 75% of its allocated numbers, and then it must consume those additional numbers within a six month period. XO, however, does not have anywhere near the same number of customers as the ILECs, and thus it has far fewer unassigned telephone numbers at each switch to allocate. This forces XO to manage unassigned numbers by porting them between switches – which is accomplished through transactions at NPAC's **SMS.** It should be noted that XO does not engage in vacant (or unassigned) number porting. It only ports when necessary to meet a customer request.

The number utilization requirements also often cause a CLEC to port numbers when it acquires another carrier in the same market (or when it adds an additional switch). For instance, a CLEC may need additional numbers at a switch, which would normally be accomplished by obtaining another "thousands block" of numbers. However, if the acquired entity has a switch with low utilization, a CLEC will be not be permitted to obtain additional numbers and will need to port numbers from this switch to the other – which will require a NPAC SMS transaction. Again, incumbents rarely acquire another local carrier in the same geographic market and do not have to make this type of transaction.

2 *In the Matter of Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rule Making,* CC Docket No. 99-200, March 31,2000.

III. New Service Providers are Unable to Use the Local Exchange Routing Guide ("LERG") as an Alternative to the NPAC

The LERG contains all routing information for NPA/NXX's (codes) and the Local Routing Number ("LRN") for "thousands blocks," including which service provider owns the code or block. As such, it is used by every service provider, including incumbents, to route calls to particular tandems or switches. It, however, does not operate below the "thousands block" level and thus will not handle modifications or activations/deletions necessary to route individual telephone numbers. This can only be accomplished through the NPAC's SMS. Virtually all of XO's modifications are implemented at the individual telephone number level, and, so when it seeks to make modifications to individual telephone numbers for purposes of ensuring proper porting, it can only do this through a transaction with the NPAC and not the LERG. This stands in contrast to the practices of the incumbent providers. As stated above, because the incumbents either do not need to access any database or can access their own for most calls, they can simply rely on the routing information in the LERG.

VI. Intracarrier Transactions by Non-Incumbent Providers Use the NPAC Consistent with the Commission's Cost Recovery Order and Rules[3]

From the previous sections, it should be evident that non-incumbent providers have no real option but to access the NPAC's **SMS** when modifying or activating/deleting their assigned numbers. In previous ex parte filings, XO documented these uses, ranging from turning-up new switches in markets as XO expands or upgrades its technology to making CLASS/LIDB/CNAM point code changes.[4] More importantly, for purposes of the pending proceeding, these uses achieve key objectives set forth in the *Third Report and Order* by providing the correct incentives for providers to: upload changes, maintain the accuracy of the NPAC SMS, and construct and operate efficient networks with state-of-the-art technology. And, most importantly, the methodology for recovery of the costs of these uses is consistent with the statutory directive of "competitive neutrality."

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3 *In the Matter of Telephone Number Portability, Third Report and Order,* CC Docket 95-116, May 12, 1998. *("Third Report and Order").* 47 U.S.C. 52.32.

4 These activities are undertaken by all telecommunications providers, incumbents and non-incumbents alike – with the critical difference being that incumbents can handle most of them without accessing the NPAC's SMS while non-incumbents cannot.

V. BellSouth's Usage-Based Cost Recovery Methodology Violates the Statutes and is Inconsistent with Sound Numbering Policy

The Commission firmly rejected a usage-based cost recovery methodology in its *Third Report and Order,* stating:

> [A]ssessing shared costs on a usage-sensitive basis could discourage carriers from performing uploads and downloads, or at least penalize those carriers that do so more frequently. The entire industry benefits from the maintenance of reliable regional databases for providing number portability.. .[A]ll carriers that port telephone numbers and all carriers that terminate calls to portability-capable NXXs depend on the timely uploading and downloading of information to and from the regional databases to ensure an accurate database and the proper routing of telephone calls. Furthermore, all telecommunications carriers that depend on the availability of telephone numbers will benefit from number portability because it allows subscribers to retain their telephone numbers when changing local service providers and because it facilitates the conservation of telephone numbers through number pooling.[5]

Not only does the revenue-cost recovery system provide the proper incentives to maintain an accurate database, it follows the principle of cost-causation since end-users are the primary beneficiaries and incumbent carriers have by far the largest share of end-users.

In its comments in this proceeding, XO submitted evidence of the enormous increase in costs it would incur by moving to a usage-based recovery methodology – evidence that clearly indicates this methodology violates the statutory requirement of competitive neutrality. In addition, any changeover would impose substantial costs throughout the database system – on the NPAC itself to upgrade its billing platform and on all service providers to install new provisioning systems.

Finally, the Commission cannot logically proceed to even consider any change in cost recovery methodology without first examining the nature of the costs of the SMS – determining with precision which are fixed and which are variable.

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5 *Third Report and Order* at ¶89.

When the Commission adopted the current cost recovery methodology, it considered a wide-variety of alternatives and found the revenue-based methodology best met the law's objectives and best achieved its policy goals. That approach has proven to work – particularly for telephone users – and no change should be made or even considered at this time.

Sincerely,

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